

(3) A combination of direct Federal enforcement and State enforcement will occur.

(4) Before making this determination, OSM will consult with each affected State and provide an opportunity for public comment. OSM will publish its determination in the FEDERAL REGISTER.

(b) *Interim Federal enforcement.* (1) If OSM determines under paragraph (a) that direct Federal enforcement is necessary, §§ 817.41(j), 817.121(c)(2), and 817.121(c)(4) of this chapter will apply to each underground mining operation subject to that determination that is conducted in a State with an approved State regulatory program.

(2) If OSM determines under paragraph (a) of this section that direct Federal enforcement is necessary, the provisions of § 843.12(a)(2) will not apply to direct Federal enforcement actions under this paragraph (b). When, on the basis of any Federal inspection under this paragraph, an authorized representative determines that a violation of § 817.41(j) or § 817.121(c)(2) exists, the authorized representative must issue a notice of violation or cessation order, as appropriate.

(3) This paragraph (b) will remain effective in a State with an approved State regulatory program until the State adopts, and OSM approves, under Part 732 of this chapter, provisions consistent with §§ 817.41(j) and 817.121(c)(2) of this chapter. After these provisions are approved, this paragraph will remain effective only for violations of §§ 817.41(j) and 817.121(c)(2) that are not regulated by the State regulatory authority.

[60 FR 16750, Mar. 31, 1995]

## PART 845—CIVIL PENALTIES

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AUTHORITY: 28 U.S.C. 2461, 30 U.S.C. 1201 et seq., Pub. L. 100-34, Pub. L. 100-202, Pub. L. 100-446, Pub. L. 101-410, and Pub. L. 104-134.

SOURCE: 47 FR 35640, Aug. 16, 1982, unless otherwise noted.

### § 845.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act with respect to cessation orders and notices of violation issued under part 843 (Federal Enforcement), except for the assessment of individual civil penalties under section 518(f), which is covered in part 846.

[53 FR 3675, Feb. 8, 1988]

### § 845.2 Objective.

Civil penalties are assessed under section 518 of the Act and this part to deter violations and to ensure maximum compliance with the terms and purposes of the Act on the part of the coal mining industry.

### § 845.11 How assessments are made.

The Office shall review each notice of violation and cessation order in accordance with the assessment procedures described in 30 CFR 845.12, 845.13, 845.14, 845.15, and 845.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

### § 845.12 When penalty will be assessed.

(a) The Office shall assess a penalty for each cessation order.

(b) The Office shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in 30 CFR 845.13.

(c) The Office may assess a penalty for each notice of violation assigned 30 points or less under the point system described in 30 CFR 845.13. In determining whether to assess a penalty, the Office shall consider the factors listed in 30 CFR 845.13(b).